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7 Attorneys for Plaintiff  
 XIMPLEWARE CORP.

8  
 9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11

12 **XimpleWare Corp.**, a California  
 Corporation,

13 Plaintiff;

14 v.

15 **Versata Software, Inc.**, f/k/a **Trilogy**  
 16 **Software, Inc.**, a Delaware corporation;  
 17 **Trilogy Development Group, Inc.**, a  
 California corporation; **Ameriprise**  
 18 **Financial, Inc.**, a Delaware corporation; and  
 19 **Ameriprise Financial Services, Inc.**, a  
 Delaware corporation,

20 Defendants.

Case No. 3:13-cv-5160-NC

**DECLARATION OF JACK RUSSO IN SUPPORT  
 OF PLAINTIFF XIMPLEWARE'S REPLY IN  
 SUPPORT OF ITS *EX PARTE* APPLICATION FOR  
 TEMPORARY RESTRAINING ORDER, FOR  
 ORDER TO SHOW CAUSE RE: PRELIMINARY  
 INJUNCTION, AND FOR EXPEDITED  
 DISCOVERY**

1 I, Jack Russo, declare as follows:

2 1. I am an attorney admitted to practice before this Court, and I am a partner at the  
3 law firm of ComputerLaw Group LLP, counsel for Plaintiff XimpleWare Corp. (“XimpleWare”)  
4 in this matter. I have personal knowledge of the facts set forth in this declaration, and if called to  
5 do so I could and would testify competently to the same. I make the statements here of my own  
6 personal knowledge, unless where stated on information and belief, which statements I believe to  
7 be true, and if called to do so, I could and would testify competently to those matters stated here.

8 2. On Friday, November 22, 2013, an associate in my office appeared before Hon.  
9 Socartes P. Manoukian in Santa Clara County Superior Court on behalf of XimpleWare in  
10 opposition to Ameriprise’s ex parte application to enforce a subpoena of XimpleWare. This  
11 appearance was in a California Superior Court an action that Defendant Ameriprise filed,  
12 *Ameriprise Financial, Inc., et al., v. XimpleWare Corp.*, no. 113-CV-256454. The following  
13 exhibits related to that *ex parte* appearance are attached:

- 14 • **Exhibit 1:** Ameriprise’s Petition to Enforce Deposition Subpoena
- 15 • **Exhibit 2:** Ameriprise’s *Ex Parte* Application
- 16 • **Exhibit 3:** Declaration of Case Collard (counsel for Ameriprise)
- 17 • **Exhibit 4:** XimpleWare’s Declaration in Opposition
- 18 • **Exhibit 5:** Judge Manoukian’s order from that hearing

19 3. I appeared before Judge Manoukian this Monday, December 2, 2013. The  
20 following exhibits related that that second appearance are attached:

- 21 • **Exhibit 6:** Letter from XimpleWare counsel to Judge Manoukian
- 22 • **Exhibit 7:** Letter from Ameriprise counsel to Judge Manoukian
- 23 • **Exhibit 8:** Ameriprise’s Supplemental Brief
- 24 • **Exhibit 9:** The form of Judge Manoukian’s order after that hearing, as agreed by  
25 the parties

26 4. Attached as **Exhibit 10** is a copy of an article from the website InvestmentNews  
27 that discusses the “producer” terminology and the fact that thousands of Ameriprise “producers”  
28

1 are independent contractors or otherwise not Ameriprise employees. Relevant portions of the  
2 article are highlighted for the Court's convenience.

3 5. Attached as **Exhibit 11** is an excerpt from Ameriprise's most recent Annual  
4 Report filed with the U.S. Securities Exchange Commission on February 26, 2013. The Annual  
5 Report states at p. 5:

6 We provide clients financial planning, advice and brokerage services through our  
7 nationwide network of more than 9,700 advisors, of which more than 2,300 are  
8 employees of our company and more than **7,400 are independent franchisees or  
employees or contractors of franchisees.**

9 (emphasis added). Relevant portions of the article are highlighted for the Court's convenience.

10 The full annual report is available from the SEC's website at

11 <http://www.sec.gov/Archives/edgar/data/820027/000104746913001718/a2212970z10-k.htm>.

12  
13 I declare under penalty of perjury under the laws of the State of California that the  
14 foregoing is true and correct, and that I signed this declaration on December 3, 2013 in Palo Alto,  
15 California.

16 /s/ Jack Russo

17 Jack Russo  
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